

***INITIAL COMMENTS IN RESPONSE TO THE
PUBLIC NOTICE OF INFORMAL HEARING
(REQUEST FOR COMMENTS)
CONCERNING THE SPRING 2009 ELECTRIC PROCUREMENT EVENTS***

Presented to

THE ILLINOIS COMMERCE COMMISSION

by

THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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June 1, 2009

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The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, submits these Initial Comments in response to the Commission's Public Notice of Informal Hearing (Request for Comments) Concerning the Spring 2009 Electric Procurement Events Which Were Held On Behalf of Commonwealth Edison Company and the Ameren Illinois Utilities (Ameren-CILCO, Ameren-CIPS, and Ameren-IP), issued on May 15, 2009, pursuant to 220 ILCS 5/16-111.5(o). Staff's response focuses exclusively on recommendations for potential improvement during the next procurement cycle.

1. If the IPA chooses to hire a procurement planner, the procurement planner hiring process should be completed no later than July 15, using something like the following schedule:

IPA issues RFQ for procurement planner	Jun 01
IPA receives responses to RFQ	Jun 11
IPA provides list of experts based on response to RFQ	Jun 12
Parties submit objections to IPA	Jun 17
IPA revises list and files it	Jun 18
Parties file objections to Commission	Jun 23
Commission decides on list of experts	Jun 28
IPA issues RFP for procurement planner	Jun 29
IPA receives responses to RFP	Jul 13
IPA chooses procurement planner	Jul 15
Due date for utilities to provide load forecasts to IPA	Jul 15
Due date for presenting procurement plan for public comment	Aug 17

Rationale: Last year, the IPA did not hire any experts or expert consulting firms to create the procurement plan, as seemingly contemplated in the IPA Act. However, if the IPA intends to hire any such procurement planners for the upcoming plan year, then Staff notes that the Act requires a multi-step process for their selection similar to the one required for selecting procurement administrators. Although the Act does not specify when procurement planners should be hired, it is merely assumed here that the IPA would want to give its procurement planner(s) at least 1 month to create the plan prior to the

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statutory due date of August 15. In Staff's view, this is less than the amount of time that should be afforded the procurement planner, but this is for the IPA to decide. Taking into account the amount of time that is liable to be required to complete the multi-step hiring process, it becomes clear that the IPA needs to immediately initiate the hiring process for one or more experts or expert consulting firms to create the procurement plan. Indeed, the schedule shown above for hiring the procurement planner is considerably more aggressive than the schedule that Staff will be suggesting for hiring the procurement administrator. It would allow only 10 days for potential vendors to respond to the IPA Act's required request for qualifications and only 12 days for qualified vendors to respond to the IPA Act's required request for proposals.

2. The procurement administrator hiring process should be completed by the end of December, using something like the following schedule:

IPA issues RFQ for procurement administrator	Sep 01
IPA receives responses to RFQ	Sep 29
IPA provides list of experts based on response to RFQ	Oct 14
Parties submit objections to IPA	Oct 21
IPA revises list and files it	Oct 28
Parties file objections to Commission	Nov 04
Commission decides on list of experts	Nov 12
IPA issues RFP for procurement administrator(s)	Nov 16
IPA receives responses to RFP	Dec 09
IPA chooses procurement administrator and notifies ICC	Dec 16
ICC approves or rejects IPA choice of proc admin	Dec 21
Contracts signed between IPA and proc admin	Dec 29

Rationale: The IPA Act sets forth a multi-step process for the IPA to select procurement administrators. Although the Act does not specify when the procurement administrator should be hired, an appreciation for the many tasks that the procurement administrator must complete prior to the beginning of the plan year (June 1), an appreciation for the fact that many of those tasks are required by statute to be approved by

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the Commission, as well as common sense, dictates that the procurement administrator should be hired no later than early January and preferably sometime in December. Taking into account the amount of time that is liable to be required to complete the multi-step hiring process, it becomes clear that the IPA needs to initiate the hiring process no later than September 1.

3. Preference should be given to hiring a single procurement administrator to minimize unnecessary differences between the Ameren and ComEd procurement processes and documents.

Rationale: While ComEd and Ameren are separate buyers, the pools of potential suppliers to ComEd and Ameren overlap considerably. Thus, differences between the ComEd and Ameren procurement processes should be minimized to make it easier for potential bidders to learn about and participate in both. Having a single procurement administrator would go a long way toward eliminating unnecessary differences between the ComEd and Ameren procurement processes (including but not limited to their standard contracts and credit terms and instruments and their application procedures).

Furthermore, having a single procurement administrator would reduce the potential for scheduling conflicts between the ComEd and Ameren RFP processes. Of course, Staff recognizes that the IPA will have other criteria to consider in making its choice(s) of procurement administrator(s), and that, in any given year, it may still be appropriate to hire more than one procurement administrator. If and when that turns out to be the case, then Staff would recommend that the IPA actively work to minimize unnecessary differences between Ameren and ComEd procurement processes and to coordinate scheduling to avoid conflicts and bottlenecks from arising.

4. Utilities should provide the following details in the work papers supporting their load forecasts, by month and on-peak/off-peak period, starting with June of the subject plan year:

- a. At least sixty months of forecasted usage, before adjusting for customer switching, at the customer meter (without distribution or transmission system energy losses).**
- b. At least sixty months of forecasted usage, before adjusting for customer switching, at the wholesale level (with distribution system losses and any transmission system losses deemed relevant by the utility).**
- c. At least sixty months of forecasted usage, after adjusting for customer switching, at the customer meter (without distribution or transmission system energy losses).**
- d. At least sixty months of forecasted usage, after adjusting for customer switching, at the wholesale level (with distribution system losses and any transmission system losses deemed relevant by the utility).**

Rationale: Unquestionably, the version of the load forecasts designated above as "d" is the most important of the four because it shows what the utility is expected to have to acquire, one way or another, under normalized conditions. However, the other three versions provide additional information which may be useful for estimating expected retail rates and in making later comparisons of forecasts to actual usage levels. In addition, it was Staff's impression that there was some initial confusion concerning last year's forecasts: (i) whether they were or were not adjusted for customer switching; and (ii) whether they included or excluded distribution system losses and any relevant transmission system losses. To eliminate the potential for such confusion, it is Staff's opinion that the forecasts should be provided for all four combinations (at the monthly on-peak and monthly off-peak level of detail).

5. Utilities should provide the following historical details in the work papers supporting their load forecasts, by month and on-peak/off-peak period, ending with the most recent month where data are available:

- a. At least thirty-six months of actual usage, before adjusting for customer switching, at the customer meter (without distribution or transmission system energy losses).**
- b. At least thirty-six months of forecasted usage, before adjusting for adjusting for customer switching, at the wholesale level (with distribution system losses and any transmission system losses deemed relevant by the utility).**
- c. At least thirty-six months of forecasted usage, after adjusting for customer switching, at the customer meter (without distribution or transmission system energy losses).**
- d. At least thirty-six months of forecasted usage, after adjusting for customer switching, at the wholesale level (with distribution system losses and any transmission system losses deemed relevant by the utility).**

Rationale: Historical data provides a way to assess trends and the accuracy of previous forecasts. Using the four versions of actual data as are used in the forecasts facilitates better comparisons.

6. With respect to forecasts provided in prior procurement plans, utilities should provide comparisons of previously forecasted usage to actual usage, by month and on-peak/off-peak period, ending with the most recent month where historical usage data are available.

Rationale: Utility forecast models are complex and should be understood well by those who maintain the models. As part of the forecast evaluation process, it would be useful to see how the utilities have assessed the accuracy of those forecasts.

7. Utilities should include with the forecasts they prepare for the IPA, and the IPA should include in its procurement plan filings, the following additional information:

- a. On a per kwh basis, for the upcoming plan year, a calculation of the maximum allowable annual estimated average net increase due to the costs of the utility's purchase of renewable energy resources included in the amounts paid by eligible retail customers in connection with electric service,**

as described in item (2) of subsection (c) of Section 1-75 of the Illinois Power Agency Act; and

b. The forecasted quantity of Eligible Retail Customer load at the customer meter for the upcoming plan year.

Rationale: The above information is required for deriving the spending limits for the utilities' purchase of renewable energy resources during the upcoming plan year. Hence, it should be in the record of the procurement docket. Since the utilities will have this information but the IPA will not, the utilities should provide the information to the IPA with its July 15 forecasts. In addition, it can also be noted that provisions of SB 2150, a bill that has passed both chambers of the Illinois General Assembly, would require the Commission to use such information to compute alternative compliance payment rates that would be applicable to alternative retail electric suppliers attempting to comply with renewable portfolio standard requirements of that bill.

8. Limit the aggregate amount of unsecured credit for winning bidders that are affiliates to the maximum unsecured credit limit allowable under the energy and capacity contracts (i.e., \$80 million).

Rationale: Ameren's energy and capacity contracts and ComEd's energy contract limit the utilities' – and ultimately the ratepayers' – exposure to a single supplier or guarantor by granting a single line of unsecured credit ("Credit Limit") to suppliers that win more than one RFP and guarantors that provide credit support to more than one supplier. Each credit-worthy supplier receives a Credit Limit, which reduces the amount of collateral required to cover that supplier's aggregate exposure under all RFP-related energy and capacity contracts with either Ameren or ComEd. Similarly, each guarantor, even those that provide credit support to more than one supplier, receives one Credit Limit for all RFP-related energy and capacity contracts with either Ameren or ComEd.

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For the next RFPs, Staff recommends adding a provision to the contracts that limits the amount of unsecured credit granted to affiliated winning bidders to the maximum Credit Limit permitted under the contracts, *i.e.*, \$80 million. The utilities should calculate each bidder's Credit Limit according to its credit rating or the credit support specified in that bidder's application. Then, if necessary, the utilities should ratably reduce the Credit Limit for affiliates, such that the aggregate Credit Limit for affiliated winning bidders does not exceed \$80 million. Adding this provision to the contracts would effectively limit the utilities' – and ultimately the ratepayers' – exposure to a group of related companies.

9. Amend Ameren's contracts by updating the definition of Credit Rating.

Rationale: On November 5, 2008, Standard & Poor's ("S&P") eliminated notching between issuer ratings and unsecured debt ratings for investment grade utilities. That is, the new S&P rating methodology for investment grade utilities is the same as the Moody's methodology, *i.e.*, issuer rating is equivalent to the senior unsecured debt rating. Thus, Staff recommends updating the definition of "Credit Rating" in Ameren's contracts to reflect this change in the S&P rating methodology that applies specifically to investment grade utilities.

The 2008 Ameren contracts define Credit Rating as follows:

"Credit Rating" means the senior unsecured long-term debt rating of a party, or of its Credit Support Provider, if applicable, or of an entity assigned by S&P, Moody's or Fitch (each a "Credit Rating Agency"), or if such senior unsecured long-term debt rating is not available, then the then assigned issuer rating (or corporate credit rating) assigned by S&P or Fitch, discounted by one notch, or the then assigned issuer rating assigned by Moody's. (energy contract, p. 19; capacity contract, p. 16)

Based on this definition, all three Ameren utilities have investment grade Credit Ratings (*i.e.*, BBB-/Baa3/BBB- or above) from Fitch and none of the Ameren utilities have investment grade Credit Ratings from Moody's. However, only CILCO does not have an

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investment grade Credit Rating from S&P.¹ That is, the Ameren contracts require notching down CILCO's S&P issuer rating once because CILCO does not have an S&P senior unsecured debt rating. However, notching the S&P issuer rating for CILCO is inconsistent with the new S&P rating methodology for investment grade utilities, which indicates CILCO's S&P issuer rating, BBB-, would equal its senior unsecured debt rating (as is the case for CIPS and IP).

Updating the Credit Rating definition to reflect the new S&P rating methodology for investment grade utilities, as Staff proposes, means all three Ameren utilities would have investment grade Credit Ratings and suppliers would have additional assurance that S&P views the Ameren utilities as having credit risk commensurate with an investment grade credit rating.

10. Amend ComEd's REC contract to require suppliers to post Collateral in an amount equal to 10% of the remaining contract value.

Rationale: ComEd's REC contract requires suppliers to post collateral (performance assurance) equal to five (5) dollars, multiplied by that supplier's undelivered REC quantities. ComEd's REC contract does not grant suppliers a Credit Limit to reduce collateral requirements. In contrast, Ameren's REC contract requires suppliers to post collateral equal to 10% of the remaining contract value. Ameren's REC contract grants

¹ The Ameren utilities' current credit ratings from S&P, Moody's and Fitch:

	S&P		Moody's		Fitch Ratings	
	Senior Unsecured	Issuer	Senior Unsecured	Issuer	Senior Unsecured	Issuer
CILCO	NA	BBB-	Ba1		BBB+	BBB
CIPS	BBB- (prelim)	BBB-	Ba1		BBB	BBB-
IP	BBB- (prelim)	BBB-	Ba1		BBB	BBB-

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suppliers with a credit rating of BB+ or higher a Credit Limit to reduce collateral requirements. Both utilities' REC contracts permit winning bidders to satisfy collateral requirements using cash, a letter of credit (LOC) or delivered RECs.

Staff recommends modifying ComEd's collateral requirements to equal a percentage of contract value rather than \$5 per REC. In 2008, the load weighted average of the winning bid prices for ComEd's REC procurement event ranged from \$35.72 (Illinois Wind RECs) to \$4.25 (Other State Non-Wind RECs). (4/23/08 Public Notice of Winning Bidders and Average Prices for ComEd REC RFP Procurement) Requiring \$5.00 per REC as collateral effectively requires collateral ranging from 14% to 118% of the average REC prices. For 2009, the final average winning prices ranged from \$21.13 (Illinois Wind RECs) to \$13.69 (Illinois Non-Wind RECs), which required collateral postings ranging from 24% to 37% of the average REC prices. Staff recommends amending the ComEd REC collateral requirements to reflect a percentage of remaining contract value.

In Staff's view, the benefits related to using a percentage of contract value rather than a flat dollar amount are two-fold. First, using a percentage of contract value could result in lower winning bid prices due to relatively lower collateral requirements. Second, a dynamic collateral requirement would adjust as the market price for RECs changes. Staff has no objection to Ameren's REC collateral requirement that equals 10% of remaining contract value and views that as a reasonable substitute for the five dollars per REC requirement that ComEd currently uses.

11. Make necessary changes to achieve consistency in credit requirements and credit support documents, i.e., Letter of Credit and Guaranty.

Rationale: Ameren's contracts for energy and capacity are different from ComEd's energy contract. Although the utilities' RFPs solicit different energy products, several of

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the credit requirements are similar, *i.e.*, the maximum allowable unsecured credit limit.

Staff recommends that the utilities eliminate credit requirement differences in the energy and capacity contracts wherever possible.

In contrast to energy and capacity contracts, Ameren and ComEd use the same standard REC contract; nonetheless, the utilities have different credit requirements. Staff recommends that since Ameren and ComEd use the same standard contract to procure the same products in the REC RFPs, then the credit requirements in the REC contracts should be identical for both utilities.

Finally, in every RFP, Staff recommends that Ameren and ComEd move towards using identical credit support documents, including permitting suppliers to use the same menu of optional language for the Guaranty and letters of credit.

In Staff's judgment, consistent credit requirements should benefit suppliers and, ultimately, ratepayers by minimizing the costs stemming from suppliers reviewing multiple contracts and credit support documents as well as attracting more bidders.

12. When soliciting comments from interested parties on the standard contract and credit documents, procurement administrators should ask for both (1) redline changes and (2) explanations of why the proposed changes should be made.

Rationale: At one stage in the procurement process, the procurement administrator is required by 220 ILCS 5/16-111.5 16(e)(2) to consult with the Commission, the utilities, and other interested parties (such as potential bidders) concerning the development of standard contract forms and credit terms and instruments. In addition, all written comments of interested parties are provided to the Commission. In the most recent procurement process, some interested parties presented redline changes to the procurement administrators' draft documents, while others presented comments

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combining descriptions of desired changes along with some explanation of why the changes should be made. It is Staff's opinion that providing both redline changes and explanations of why the proposed changes should be made would best serve the procurement administrator and the Commission in determining which changes should be accepted. Of course, interested parties would remain free to provide whatever type of comments they wish (or none at all, for that matter).

13. There should be a cut-off date, prior to bid day, for asking the procurement administrator questions that do not directly relate to the bidding process.

Rationale: It would be hoped that all bidder questions about the RFP, including any questions about the standard contract forms and credit terms and instruments, eligibility of certain types of renewable resources, bidding procedures, and all other types of questions, would be asked and answered well prior to bid day. This is because bid day is one filled with much activity. Furthermore, some questions cannot necessarily be answered on the fly, but may require consultation with other parties. To discourage bidders from waiting until the "final hour" to ask the procurement administrator questions, it may be beneficial for the procurement administrator to establish explicit cut-off dates for most types of questions. Of course, despite the best-laid plans, technical difficulties and other issues may still arise, unavoidably and all of a sudden, on bid day. Hence, procurement administrators should avoid hard and fast prohibitions with respect to bid-day questions.